Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
National Telecommunications	)	RM No. 10522
Cooperative Association Request for	)	
Amendment of the Commission's Rules	)	
To Define "Captured" and "New"	)	
Subscriber Lines for Purposes of Receiving	)	
Universal Service Support	)	
…………………………………………………	)	

COMMENTS

of the

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I. INTRODUCTION

The Washington Utilities and Transportation Commission (WUTC) files these comments in opposition to the National Telecommunications Cooperative Association (NTCA) request to the Federal Communications Commission (FCC) for an expedited rulemaking to define "captured" and "new" subscriber lines. The WUTC recommends that any consideration of the definitions, along with other issues, be directed first to the Federal–State Joint Board on Universal Service.

We disagree with NTCA's claim that desperate circumstances exist that warrant expeditious action that would fundamentally change an FCC policy.

There is no public waste of universal service support because of the current definitions or because wireless carriers provide supported service to residents in low-revenue locations.[1] Rural ILECs have always received support for multiple lines provided to customers, and under recent FCC policy changes there is now support for multiple lines when the company providing some of the multiple lines is not the rural ILEC.

There is no uncontrolled ballooning of the federal universal service fund due to competition in low-revenue locations. The fund has grown to $5 billion dollars, distributed mostly to rural ILECs, while competitors are projected to receive only $76 million dollars in 2002. *NTCA Petition at 3.*

Competitors do not choose to compete against rural ILECs because of duplicative support. Rather, in making the choice to compete in low-revenue locations, competitors have realized that they must have equal access to the same support as rural ILECs. Once all carriers face the same revenue possibilities, then they compete on market forces such as service, options, and innovation in features.

There are no disincentives to investment in rural areas as a result of support for all lines in low-revenue locations. Instead, this policy is an incentive for investment, which has created the struggle in a fair market that NTCA asks the FCC to alter so that no other companies will invest in rural areas and compete with rural ILECs.

II. Background – Universal Service Principles

In making our comments, we are guided by the following policies of universal service support and competition.

[1] Where many would expect the term "high-cost," we have used "low-revenue" in these comments because the issues raised concern two technologies that may have different costs, but have in common that both need revenue support in locations where there are too few customers to provide complete cost recovery for even very modest network investment.

A. Customers in rural areas should have access to reasonably comparable services at reasonably comparable rates.

Congress stated that customers in all areas of the nation should have access to reasonably comparable services at reasonably comparable prices. 47 U.S.C. § 254(b)(3). There is nothing in the Act to suggest that Congress meant that customers who reside in low-revenue locations should be denied the benefits of competition or access to wireless services that are offered by providers other than NTCA members.

B. All carriers that are eligible for support must receive sufficient support.

The Act requires that universal service support be specific, predictable, and sufficient. 47 U.S.C. § 254 (b)(5). Support must be explicit and sufficient. 47 U.S.C. 254(e). A carrier that is designated as an eligible telecommunications carrier (ETC) is eligible to receive universal service support. 47 U.S.C. 214(e)(1). As a result of these statutory provisions, any designated carrier must receive universal service support that is explicit, predictable, specific, and sufficient for service in rural, insular, and high-cost areas.

C. Universal service mechanisms must be based on, and administered with, competitive and technological neutrality.

The Act provides for both increased competition and the preservation and advancement of universal service. In order to achieve both, the FCC adopted the principle of competitive and technological neutrality.[2] Competitive neutrality has as one purpose the prevention of discrimination that would have the effect of favoring one carrier or disfavoring another.

An additional purpose is to ensure that the market place, rather than government, chooses the technology that is most suitable for any given consumer.[3] It assumes substantial differentiation among products and services, and among

[2] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (May 8, 1997), ¶ 47.

[3] *Id.* at ¶ 48.

customers' inclination or ability to choose among those different products and services.

III. Competition and Support

A. Reasonable comparability of service and rates requires support for all lines per customer.

i. Current policy supports all lines per customer.

Support for all lines has been the policy across the nation and in Washington State for several decades. Federal and state universal service mechanisms have provided support for all lines in low-revenue locations. Because of this policy, there are 400,000 supported residential lines and 35,000 supported business lines in low-revenue locations in Washington regardless of whether they serve single or multi-line customers.

ii. NTCA's recommendation would result in an elaborate rule with uncertain and uneven application.

Support for all lines means that those who live in low-revenue locations may have two residential lines, or several business lines, at rates comparable to those in high-revenue locations. The alternative, support for one line per residence or business, would mean customers in low-revenue locations would not have access to comparable services (multiple lines) at comparable rates. In Washington, a policy of single-line support could mean that some customers would pay on average $19.00 per month for one line but would be required to pay as much as $450.00 per month for a second line. The simple decision to have a FAX line could turn into a decision about spending $5,000 per year.

Support for all lines is administratively easy, while support for only one line would require elaborate regulation, expensive administration, and intrusive enforcement. In order to ensure that second lines are charged at cost, it would be necessary to decide if only one person per family may order a line; it would be necessary to have elaborate rules that would prevent business customers from creating affiliates just so they could order supported lines; it would be necessary to determine if a residential customer who orders a business line is actually in business or has determined that a business line priced at $30.00 per month is less expensive than a second residential line priced at $450.00. These are but a few of the many circumstances that would require elaborate rules, expensive administration, and intrusive enforcement efforts. This level of effort would be required with just one company operating in a low-revenue location; it would be more than doubly difficult to administer such a policy if there were two companies offering service.

NTCA's solution to its concern that there is too much universal service support is a rule that would require elaborate rules and expensive administrative efforts to determine if customers are subscribing to more than one provider, rather than more than one line. *NTCA Petition at 7*. Its proposal would not limit the number of supported lines directly. A better way to address the size of the universal service fund in a substantial way would be to limit the number of supported lines a customer may have (an approach we oppose, and suspect NTCA also would oppose).

B. If all lines are supported, competitive and technological neutrality require that lines provided by all companies, including companies using wireless technology, must be supported.

Absent a legal or policy reason, the principle of competitive and technological neutrality must be applied in low-revenue locations where all lines are supported.

i. There is no policy reason to limit basic telecommunications to wireline service.

There is no policy reason to limit customers to subscription to just one company and just one technology. The WUTC addressed this issue when rural ILECs opposed designation of a wireless carrier as an ETC for certain rural exchanges in Washington. Rural ILECs complained that wireless service is not used to provide basic service, rather is used in addition to landline service to homes and businesses. We responded that we do not believe we should constrain rural citizens to communication only from their homes.[4] We now add that we do not think we should constrain rural businesses to communication within their place of business.

ii. Mobile telecommunications assists families and increases business efficiency.

Mobile telecommunications serves families' basic communication needs, including communications when one or more family member is outside the home. Rural residents may travel farther from home than urban residents to meet their daily needs of education, shopping, banking, purchasing gasoline, and most every other daily activity. Mobile communications can be very beneficial in the accomplishment of these activities. Indeed, if the tractor breaks down in a remote field, or the car breaks down on a rural highway, a wireless telephone may save hours of time walking to the nearest landline telephone.

Mobile telecommunications also increase productivity. While some businesses operate with workers who are stationary and can have a telephone placed at their desk, many businesses require travel. In rural locations this is especially the case. For example, urban customers take their pets to the veterinarian, but rural customers must ask the veterinarian to come to the farm to care for large animals. Urban workers go to offices and stores, while farmers must tend to areas that may be in excess of 1,000 acres (and sometimes 10,000). These are just two examples of how the nature of business is different in rural areas than it is urban areas, and why mobile communications will bring greater efficiency to rural businesses.

[4] *In the Matter of the Petition of RCC Minnesota (d/b/a Cellular One) for Designation as an Eligible Telecommunications Carrier,* Wash. Utilities and Transportation Comm'n. Docket No. UT-023033, Order Granting Designation as an Eligible Telecommunications Carrier (August 14, 2002). ¶¶ 48-50.

C. Sufficiency of support required to ensure competitive and technological neutrality.

Competition in markets is based on factors such as price, service, options, and innovations in features. In low-revenue locations, the cost of infrastructure investment must be borne by only the local subscribers or by the local subscribers and state and federal mechanisms.

i. Sufficient support is needed for all providers in low-revenue locations.

Low-revenue locations exist because of the low population density in an area. In order to provide service in a low-revenue location, carriers of all different technologies need support. If some carriers receive support, while others do not, only the supported carrier will be in a position to offer the lower priced service *and* to invest in innovation and infrastructure. The unsupported carrier could attempt to overcome price disparity through better service or innovation in the features provided, and may succeed in overcoming the price disparity that results from providing better service or its investment in successful innovation, but cannot overcome price disparities resulting from an uncompetitive, technologically biased support mechanism. Competitively and technologically neutral support mechanisms result in sufficient support for all carriers, while any other mechanism will result in an advantage for some carriers and a disadvantage for others.

ii. The requirement that support funds be used only for the intended purpose ensures infrastructure investment in low-revenue locations regardless of cost differentials between carriers.

The NTCA suggests that some competitors receive support where their costs are low enough to compete effectively without additional support. *NTCA Petition at 14*. It states that high cost support is a "windfall" for many carriers that do not have to show their costs or "that support is advancing universal service in any way." *Id.* Neither of these is the case unless NTCA is alleging that some carriers are violating 47 U.S.C. 254(e), for which it has provided no evidence.

Even if some carriers may have costs that are less than the rural incumbents' costs, this differential does not constitute a windfall. Rather, the cost savings represent additional money that must be invested for the provision, maintenance, and upgrading of facilities and services used to provide universal service.

In Washington, rural ILECs criticized a wireless petitioner for ETC status for not serving every customer in existing wireline exchanges. The rural ILECs faulted the wireless company for having good signal strength along main roads in rural areas, but having poor signal strength farther away from main roads. They compared the near 100% service to inhabited structures by wireline in some rural exchanges with the lack of wireless signal strength at homes several miles away from main roads. We were asked by rural ILECs not to designate the wireless company because it does not serve every home. The wireless company asked us to grant ETC designation so that it could build its network beyond the main roads, the only locations where it can earn sufficient revenue without support to warrant the investment.

In granting ETC designation to the wireless carrier, we based our decision on the policy to create competition and provide the benefits of competition to rural customers. If the wireless carrier's costs are lower than the local rural ILEC's costs, then the wireless infrastructure will expand at a more rapid rate than was the case with the rural ILEC over the last several decades.

iii. <u>There is no disincentive for rural ILECs to invest in low-revenue locations because their support is based on cost.</u>

NTCA states there is a disincentive to investment in rural areas because rural ILECs "know the more they invest to maintain and upgrade their networks, the more attractive high-cost support and interstate common line support become to unregulated CETCs considering entry into their markets." *Id.* If rural ILECs received support in low-revenue locations based on the number of customers served, the NTCA may be right about a disincentive to invest. However, because rural ILECS receive support based on cost, they have the same incentive to invest today as they had prior to adoption of the FCC policy that has the effect of supporting all lines.

At one time, the universal service support policy resulted in a “zero-sum game,” whereby the rural ILECs had a disincentive to invest. The loss of a significant number of customers would have resulted in the loss of revenue and costs that would not be recovered. However, this is not the case now that the rural ILECs’ costs determine the level of support. While “spend and receive” may not be the best policy choice when networks are complete, it is a very good policy choice if promotion of investment is desired.

Competitors today are investing universal service dollars in low-revenue areas. Not one rural ILEC has informed the WUTC that it is reducing investment. In August 2002, all rural ILECs and competitors in Washington certified to us that they are using universal service dollars only for the intended purposes. Statements by the NTCA to the contrary are not convincing. If some competitors receive more than is absolutely necessary, the excess must be invested. A more rapid investment policy is a positive outcome, not a “windfall” for anyone other than customers in low-revenue locations.

IV. Conclusion

The FCC collects and distributes $5 billion dollars annually in universal service support, the lion’s share of which is provided to NTCA members and other rural ILECs. Competitors may collect $76 million dollars in high-cost funds in 2002. It is obvious that whatever concerns there are about the total size of the fund, the concerns would exist if competitors received no support. The funds are spent only on universal service, as Congress intended, and as certified to state commissions by rural ILECs and competitors.

The present FCC rules should not be altered in an expedited rulemaking. If changes should be made at all, they should be made only after the Federal-State Joint Board on Universal Service has studied the issues.